100

Supreme Court, U.S.
FILED

(1) 08-89 MAY 27 2008

No.
OFFICE OF THE CLERK
William K. Suter, Clerk

IN THE

Supreme Court of the United States

DARIA KARIMIAN
BAHIROO BAHIZAD

Petitioner(s)

v.

UNITED STATES OF AMERICA

Respondent(s)

On Petition For Writ Of Certiorari
To The Fourth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Robert J. Harris, Esq.
Counsel of Record

Spencer D. Ault, Esq.
Stone Manor Associates
13193 Mountain Road
Lovettsville, Virginia 20180
(703) 777-7800
Fax: (540) 822-9440

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals err by failing to issue a certificate of appealability when the Petitioners were denied Effective Assistance of Counsel because their defense counsels had not prepared for trial, did not inform the defendants of available legal defenses, had two attorneys from the same office represent defendants with conflicting interests, and tricked the defendants into pleading guilty by providing erroneous and incomplete information?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW ii
TABLE OF CITED AUTHORITIES iv
STATEMENT OF JURISDICTION iv
RELEVANT CONSTITUIONAL PROVISIONS AND STATUTES v
STATEMENT OF FACTS 1
ARGUMENT 17
Appendix A: Judgment Entered February 25, 2008 38
Appendix B: Per Curiam Opinion of the Fourth Circuit Court of Appeals 39
Appendix C: Final Order from the United States District Court for the Eastern District of Virginia 43
Appendix D: Transcript of United States District Judge Verbal Ruling 45
Appendix E: 28 USC 2255 Motion of Daria Karimian 50
Appendix F: Draft Red-lined Statement of Facts 69
Appendix G: Affidavit of Philip Walsh, Esq. 76
Appendix H: Submitted Statement of Facts 79
Appendix I: 28 USC 2255 Motion of Bahiroo Bahizad 85
Appendix J: Statement of Facts With Original Cross-outs 93
CERTIFICATE OF SERVICE 98

TABLE OF CITED AUTHORITIES

United States of America v Karimian, Bahizad, Unpublished Opinion No. 07-6936, (4th Cir., 2008)

United States of America v Karimian, Case No. 1:04-cr-00406-CMH, 1:06-cv-870

United States of America v Bahizad, Case No. 1:04-cr-00406-CMH, 1:06-cv-872

STATEMENT OF JURISDICTION

Jurisdiction before this honorable Court is 28 U.S.C. §2255 and Rule 10 of the Rules of the United States Supreme Court from that judgment entered on February 25, 2008 by the Fourth Circuit Court of Appeals regarding the issuance of a certificate of appealability.

RELEVANT CONSTITUIONAL PROVISIONS AND STATUTES

Sixth Amendment of the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence

28 USC §2255

Sec. 2255. Federal custody; remedies on motion attacking sentence

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or

resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court

has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

STATEMENT OF FACTS

Your Appellants were indicted on October 20, 2004- Appellant Karimian on eight counts and his wife, Bahiroo Bahizad, on four counts. The Indictment arose as the result of the filing of bankruptcy petitions by Appellant Karimian and a business, Crystal Car Care, Inc., filed as if directed by Appellant Bahizad without her knowledge. The schedules that were filed as part of those bankruptcy petitions provided incomplete and erroneous information. Appellant Karimian indicated that he had been provided signature pages to sign and had not seen the completed schedules before they had been filed. He had been represented in the bankruptcy proceedings by a trusted attorney who had represented your Appellants for more

than a decade, and previously represented Appellant Karimian's late father.

Your Appellants hired their defense counsels in early January, 2005 to represent them in these matters, paying fifty-five thousand ($55,000.00) dollars at that time. Their defense counsels had represented that they would require such a fee because they were not going to be representing other individuals during the short period that they had before trial which was initially scheduled for February 1, 2005. Initially, Appellants met with Defense Counsel John Zwerling, who introduced your Appellants to another attorney at his office, Chris Leibig, to allegedly separately represent the interests of Appellant Bahizad. The trial date was continued to February 28, 2005.

Despite the representations of their counsels, they were often not available to meet with them to prepare for trial due to other case demands. A week before trial, neither counsel had compiled a list of witnesses or exhibits. Neither had issued any subpoenas, despite charging additionally for alleged subpoena costs. Other than a chance meeting with the previous bankruptcy counsel involved in the underlying circumstances that gave rise to the indictment, neither had met nor communicated with any witnesses. They had not made any trial preparations, subsequently claiming that they could not develop a theory of defense. Instead of taking the time to prepare for the case, defense counsels devoted their efforts to convince their clients to enter guilty pleas.

To accomplish this objective, they convinced their clients that "knowledge and intent" for a specific intent crime did not matter. They explained that "knowledge" and "intent" did not have ordinary, everyday meanings that one would read in a dictionary, but had specific legal interpretations. They explained that Appellant's lack of actual knowledge and intent was irrelevant. They explained that Appellant Karimian's mere signature on erroneous bankruptcy schedules would be sufficient to establish his guilt, and his failure to divulge information that he was unaware needed to be divulged to a bankruptcy trustee, although his bankruptcy attorney had been aware of the information and never indicated that it had to be provided, would be considered that he had been "willfully blind" to the bankruptcy process.

The impact of defense counsel's advice coerced your Appellants into authorizing counsel to entertain potential pleas that they would not have otherwise considered.

A proposed Plea Agreement and Statement of Facts were offered in mid February, 2005, and a hearing to enter a plea was scheduled for February 22, 2005. The proposed agreement provided for each of the Appellants to plead to one felony count, and both pleas were conditioned upon both of your Appellants pleading. Appellant Karimian was to plead to a violation of 18 U.S.C. §152(7) of "knowingly and fraudulently transferring or concealing property" and Appellant Bahizad was to plead to a violation of 18 U.S.C. §371, conspiracy to falsely represent social security numbers. It was expressed to Appellant Bahizad

that she had to plead to something for which she believed herself to be innocent so that her husband, Appellant Karimian, would receive the benefit of a Plea Agreement.

Appellant Karimian made changes to correct the proposed Statement of Facts including deleting the allegation that the acts were done "knowingly and intentionally." A copy of the "draft" Statement of Facts was attached to the underlying Motion as "Exhibit B." The draft includes hand-written changes which include both your Appellant's handwriting in black ink and his former counsel's handwriting in red ink.

Upon deleting the words "knowingly and intentionally," your Appellant's counsels again advised him that those words did not have ordinary everyday meanings, but meant "legal

knowledge." The change on the aforementioned Exhibit B reflects prior defense counsel's handwriting emphasizing this meaning of "legally knowledge." Your Appellants' reaction to this advice was skepticism. Appellant Karimian objected to the language of "had knowledge" and "intentionally," and again expressed that he had relied upon the advice of his bankruptcy counsel. Appellants' defense counsels indicated that relying upon the advice of counsel was not a proper defense and reminded them that "willful blindness" would be sufficient to establish knowledge.

Appellants objected to the allegation that they were willfully blind, and explained that they did not believe that they could be considered willfully blind when Appellant Karimian continued to take steps that would

show that he had been completely ignorant of the bankruptcy process, including paying creditors during the bankruptcy process and after a bankruptcy discharge had been granted because he was unaware of the procedures or that a discharge had been granted. The only purpose for filing the bankruptcy had been to stop the business from being evicted from its business location, not to avoid debt. Defense counsels further stated that paying creditors would be further evidence of guilt because it shows that the bankruptcy process was defrauded even if no creditors were hurt. Appellant Bahizad had been without any knowledge that a bankruptcy had ever been filed for the company. The case had been filed in Appellant Bahizad's name without Appellant Bahizad's knowledge the day before the eviction

was scheduled to occur. At an expedited hearing before Judge Mayer at the bankruptcy court soon after the bankruptcy petition had been filed, Appellant Karimian informed the bankruptcy judge, Judge Mayer, that he had not reviewed the schedules before they had been filed and that the information placed in the schedules were wrong. Defense counsels expressed their opinion that these facts did not matter, that Appellant Karimian had signed the schedules although they were blank when signed, and that his signature would be sufficient to show that he was willfully blind to whatever information his counsel subsequently placed onto the bankruptcy schedules.

Appellants sought a second opinion from another attorney who they knew. That attorney, Phillip Walsh, Esq., expressed his

disagreement. (A copy of Mr. Walsh's affidavit is attached to the Preliminary Informal Brief filed with the Fourth Circuit Court of Appeals.) When this was addressed with defense counsels, they inquired as to the identity and nature of practice of the other attorney. When learning that Mr. Walsh maintained a civil litigation practice and did not practice criminal defense, they expressed their understanding why Mr. Walsh did not understand the legal principles in a criminal case. In reliance upon the representations of their counsel, changes were made to the proposed Statement of Facts to reflect the understanding that Appellant Karimian did not knowingly do anything wrong, but that he would be attributed with "legal knowledge" or "should have" known, and that "intentionally" was struck as reflected on the

attached draft Statement of Facts. Additional changes were also made.

It was your Appellants' understanding that the changes were to be made to the Statement of Facts. Your Appellants had been informed by their counsels that the changes would be made. Your Appellants never met with the prosecutor to review the Statement of Facts because they had been directed by their counsels not to meet.

Defense counsel Zwerling contacted the Assistant U.S. Attorney assigned to prosecute the case and discussed the changes. Although some changes were made to the Statement of Facts, the changes regarding knowledge and intent were not accepted by the Assistant U.S. Attorney. A revised Plea Agreement and Statement of Facts were faxed from the

Assistant U.S. Attorney to defense counsels' office the day before the scheduled hearing for entry of the plea. Defense Counsel substituted the Statement of Facts with a different document, a Complaint for Forfeiture, and faxed those documents to your Appellants. Your Appellants believe that this substitution of document was deliberate as it failed to let your Appellants know that there was a dispute with the Statement of Facts that would have otherwise had to have been resolved before your Appellants would have entered into a plea.

The next morning, your Appellants and their counsels met at the courthouse shortly before the scheduled hearing for entry of the plea. The Assistant U.S. Attorney provided the original documents to defense counsels. Defense counsels had your Appellants sign the Plea

Agreements. They also had Appellant Bahizad sign a Statement of Facts that required revision before she would sign. They failed to present Appellant Karimian with a Statement of Facts, and urged them to hurry to the courtroom due to the lack of time. Defense counsel then took the signed Plea Agreement and the unsigned Statement of Facts, a copy of which was attached to the original Petition as Exhibit D, and provided them to the Assistant U.S. Attorney who in turn submitted them to the court. The court then, unwittingly, accepted a plea based upon an unsigned, disputed factual basis.

It was not known until the following September that the parties had proceeded upon the unsigned Statement of Facts, and that the parties had never agreed upon the factual basis

for the plea. When your Appellant was made aware that a Statement of Facts had to be signed, and that it had not been changed in accordance with his understanding, he requested that the matter be brought to the court's attention. His defense counsels refused to do so.

Between the time of the Plea and the discovery of the disagreement on the Statement of Facts, your Appellants were unaware of the unsubstantiated facts in support of the plea. While the Pre sentence Investigation Report was being prepared, Appellant Karimian was directed by Appelant Bahizad's counsel not to say anything about the Plea or the underlying facts. When a meeting occurred with the pre-sentencing probation officer, defense counsel Leibig, Appellant Bahizad's counsel, appeared to

represent both Appellants and to inform that a written report would be submitted. No written report was submitted to the officer. When the Pre-sentence Investigation Report was provided and reviewed by your Appellants, Appellant Karimian again voiced his objection to the words "knowledge" and "intentionally" being used, as reflected in an Email from your Appellant to his counsel dated June 26, 2005.

By Emails dated August 15 through August 17, 2005, your Appellants requested a copy of a letter reflecting his understanding at the time of the Plea that the prosecutor agreed that there was no intent to commit fraud. Defense counsel remained silent, ignoring the requests.

When the time was approaching for Appellant Karimian to report for his

incarceration, the error was discovered by the Assistant U.S. Attorney. Consequently, pressures were placed upon Appellants by the Government for Appellant Karimian to sign the unacceptable Statement of Facts as evidenced by a faxed letter from Louis Paulson, Esq., an attorney assisting your Appellants in a civil forfeiture case, dated September 21, 2005. Additionally, the Government imposed financial pressures upon the Appellants including adversely jeopardizing unrelated civil litigation matters in which Appellant Karimian was a party. Despite the enormous pressures being placed upon your Appellants to sign the Statement of Facts, your Appellant wrote to his former counsel by Email dated September 21, 2005 stating, "I will not sign the Statement of Facts. I will not agree to sign them until your

'verbal' agreements with Learned (the Assistant U.S. Attorney who prosecuted the case) are incorporated in the final version." Again, defense counsel did not rebut these representations.

ARGUMENT

A guilty plea must be voluntary, not procured through artifice, and must be properly supported by a factual basis. Fed. R. Crim. P. 11. A defense attorney is to help safeguard one's constitutionally-guaranteed rights and procedures. Any attempt by a defense attorney to controvert these guaranteed rights is ineffective assistance of counsel. Even if an attorney believes, in good faith, that he would be unsuccessful in defending a charge, and that it is in the accused's best interest to plead

guilty, defense counsels can not substitute their judgment for defendants.

Effective assistance of counsel does not mean that an attorney must be successful in his defense, but it does require an attorney to perform within an objectively reasonable standard. Strickland v. Washington , 466 U.S. 668 (1984). To fail to discuss appropriate defenses such as "advice of counsel", fail to speak to witnesses, fail to assimilate exhibits, fail to perform research does not comply with the necessary reasonable standard. Since the Appellants' counsels failed to perform the basic duties to comply with reasonable standards, they sought an alternative to relieve themselves of their responsibilities. That alternative was to coerce your Appellants into pleading guilty through incomplete information and subterfuge.

The incomplete information included coercion of the Appellants by stressing willful blindness as a substitute for the element of "knowingly and fraudulently" for a conviction under 18 U.S.C. §152 (7), and without discussing "advice of counsel" as a defense. The subterfuge included failing to show required documents such as a revised Statement of Facts to the accused, failing to alert the accused about disputes in a Statement of Facts, obtaining a plea knowing that there is a clear disagreement in the alleged facts between the Government and Defendants, and permitting the court to proceed on an unsigned, disputed Statement of Facts.

Accordingly, your Appellants were denied effective assistance of counsel.

Rule 11 of the Federal Rules of Criminal Procedure requires that

(2) *Ensuring That a Plea Is Voluntary.*

Before accepting a plea of guilty or nolo contendere, the court must address the Appellant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) *Determining the Factual Basis for a Plea.*

Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

Regardless of the effectiveness of counsels' representation, an unsigned Statement of Facts had been presented to the court to support a plea of guilty and a plea unknowingly took place on a disputed

Statement of Facts. Your Appellants were under the understanding that the court was proceeding under a Statement of Facts that had been changed in accordance with your Appellants' prior discussion with their counsel. Without a "meeting of the minds", no intelligent waiver of constitutionally-guaranteed rights could have occurred.

Pursuant to Rule 11, the court must determine that there is a factual basis for a guilty plea. Ideally, a written Statement of Facts, signed by a Defendant, will be utilized. When a written Statement of Facts is not available, an oral recitation of stipulated evidence may suffice, but the court must determine the factual basis for the plea. In these circumstances, the court did not request an oral recitation of the stipulated evidence because it

was believed that there was a signed Statement of Facts.

Rule 11(b) provides, among other requirements, that:

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) *Advising and Questioning the Appellant.*

Before the court accepts a plea of guilty or nolo contendere, the Appellant may be placed under oath, and the court must address the Appellant personally in open court. During this address, the court must inform the Appellant of, and determine that the Appellant understands, the following:

(C) the right to a jury trial;

(D) the right to be represented by counsel -- and if necessary have the court appoint

counsel -- at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the Appellant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the Appellant is pleading

Since there was a written Plea Agreement, and the court mistakenly believed that there was an executed Statement of Facts, no recitation of the factual basis for the charges

has been presented. Had a stipulated factual allegation been presented, the dispute may have been realized. Unfortunately, the court, the Assistant U.S. Attorney and the accused all thought they were proceeding upon an agreed Statement of Facts when there was not one. Only the defense attorneys knew that there had not been an agreement, and they remained silent.

The court did have a colloquy with your Appellants, and did verify that they understood the nature of the charges. Unfortunately, due to the information provided by their counsels that knowledge and intent did not have ordinary meaning, but had a specific legal meaning, Appellants lacked a proper understanding of those terms. The meaning that was explained to them was that intent or actual knowledge did

not matter, but that their mere signature on documents was all that was required. So when the court asked your appellants if they understood the nature of the charges, and that the Government would have to prove that they did the acts "knowingly, willfully and intentionally," their response was tainted by the understanding that had been conveyed by their counsels. If the court had reviewed the facts in support of the charges with your Appellants, the misunderstanding may have been realized.

The Appellants had initially questioned the definition and explanation that their counsels had provided of these terms, and asked another attorney, who had provided an affidavit in this matter about their inquiry on these terms. The other attorney had disagreed with the explanation provided by Appellant's defense

counsels, but defense counsels had questioned the experience and nature of practice of the other attorney. When they realized that the other attorney did not maintain a criminal defense practice, defense counsels explained that that is why the civil litigation attorney did not know the meaning of "knowledge" and "intent" for a criminal case. Consequently, your Appellants relied upon their defense counsels' definition and understood that their lack of knowledge and intent did not matter. Accordingly, when the court explained the nature of the charges, your Appellants' did not realize that there was a difference from what had been explained by their counsel and what the court was asking.

Your Appellants had been misinformed by their previous criminal defense attorneys

that Appellant Karimian's mere signature on bankruptcy schedules was sufficient to support the alleged crime because the schedules contained erroneous or incomplete information. Counsels indicated that it did not matter that Appellant Karimian relied upon the advice of his bankruptcy counsel who had him sign the schedules before they were completed, and had never shown him the completed schedules. Your Appellants were informed that it did not matter that Appellant Karimian was unfamiliar with bankruptcy laws, and the mere fact that he continued paying creditors although he had filed bankruptcy was a criminal offense although he had made payments innocently, and with no intent to deceive ar one. Counsel did not discuss with him potential defenses including "advice of counsel".

Advice of counsel would have been an appropriate defense in this matter. In order to establish an advice of counsel defense, a defendant must establish that: (1) before taking action, (2) he in good faith sought the advice of an attorney whom he considered competent, (3) for the purpose of securing advice on the lawfulness of his possible future conduct, (4) and made a full and accurate report to his attorney of all material facts which the defendant knew, (5) and acted strictly in accordance with the advice of his attorney who had been given a full report, see Devitt and Blackman, Federal Jury Practice and Instruction, 14.12 (3d Ed.1977). United States v. Bush, 599 F.2d 72, 76-78 (5th Cir.1979). Your Appellant Karimian specifically sought the advice of an attorney that he had considered competent regarding the

appropriateness of filing bankruptcy, and provided all requested materials to his attorney. The attorney prepared the schedules and advised your Appellant on the bankruptcy process upon which your Appellant Karimian fully relied.

Additionally, Appellants had been advised that their lack of knowledge or intent was not a defense to charges that specifically require knowledge and intent. Appellants' counsel Zwerling drafted a letter to the Assistant U.S. Attorney after the plea was entered confirming some of the representations that he had made. This letter was Appellants' Exhibit E during the hearing in this matter. In that letter, Defense counsels' confirmed their representation to your Appellants that "the defendants did not intend to cheat their

creditors." This reinforced for your Appellants the advice that their counsels had provided earlier that their lack of knowledge and intent would not provide a defense to the charges, and that their lay definition of knowledge and intent was irrelevant. Yet, knowledge and intent is very much relevant to a specific intent crime and would have provided a defense.

A proposed Statement of Facts was offered to your Appellants in consideration of a plea. This was only being considered because the Appellants defense counsels had informed them that there were no available defenses, and that Appellant Karimian's mere signature without knowledge and intent was sufficient to have him found guilty.

Additionally, defense counsels admitted that they had not made preparations for trial in

the event that they had not obtained a plea. They did not prepare exhibits. They had not spoken with witnesses. They had not issued subpoenas for witnesses that should have been subpoenaed, despite charging additionally for costs for subpoenas. They had not prepared questions or proposed jury instructions, or questions for *voir dire*. They had not taken any steps to defend their clients after accepting Fifty-five Thousand dollars to perform the work.

Your Appellants are husband and wife, but were codefendants on various charges. As a result of being codefendants, and the underlying facts that gave rise to the Indictment, their interests conflicted and they should have been represented by independent counsels. Unfortunately, they were not. Had they been, the collusion that occurred between their

counsels in this case to deceive your Appellants may have been avoided.

The Indictment originated as the result of two bankruptcy filings - one for Appellant Karimian individually in October 1999 and one for a company, Crystal Car Care, Inc., in November 1999 and January 2000. Appellant Bahizad had been completely unaware until 2003 that bankruptcy petitions for Crystal Car Care had been filed. The petition had been signed by Appellant Karimian. Appellant Karimian managed the daily operations of Crystal Car Care. which was being evicted from its business location. Appellant Karimian met with an attorney who had represented him on various business and litigation matters throughout the prior decade, and who had previously represented his late father. Due to

the short time before the eviction was scheduled to occur, that attorney had Appellant Karimian sign the signature pages of a bankruptcy petition and schedules before they could be completed. The attorney subsequently completed the schedules with erroneous and incomplete information. The next day, Appellant informed the bankruptcy judge at an expedited hearing regarding a Motion for Relief from the Automatic Stay that he had not reviewed the schedules and that the information was wrong. Throughout the bankruptcy process, Appellant Karimian had relied upon the advice of his long-time attorney.

After the Indictments were issued, your Appellants hired counsel. They went to the office of John Zwerling, Esq. At that office they met with Mr. Zwerling and another attorney,

Chris Leibig. They paid Fifty-five Thousand Dollars to Mr. Zwerling for the representation of both Appellants. Every time they met with their counsel, they met at the same office. Your Appellants believed both attorneys to be with the same office.

According to testimony by the attorneys, despite being at the same office, they did not officially become partners until April 1, 2005. They had begun to discuss their anticipated partnership before your Appellants met them to retain their office. At meetings and in correspondence such as the previously-described letter (Exhibit E to Petition), there was no delineation between who represented whom. At a PreSentence meeting with the probation officer who was preparing a pre-sentence investigation report, Mr. Leibig appeared to

represent both of your Appellants. Mr. Leibig had even informed Appellant Bahizad not to discuss the facts of her case or inform anyone that she had only pled to something because the pleas had been linked since it had been agreed that she would only receive probation, and the explanation may only serve to hurt Appellant Karimian. Consequently, your Appellants did not receive independent legal counsel to defend their respective interests.

When there was a discussion of a plea agreement, both of your Appellants were required to plead guilty. In order for Appellant Karimian to receive the benefit of a proposed plea agreement, Appellant Bahizad was required to plead guilty to an offense that she did not commit. Defense counsel Leibig wrote a letter confirming that Appellant Bahizad did not

commit the offense for which she was convicted, but only pled to the offense to assist her husband. A copy of the letter was Appellants' Exhibit L in the hearing in the U.S. District Court. She and her husband had been informed by the defense attorneys that Appellant Karimian had no defense to the charges because his signature did appear on the previously-described bankruptcy schedules. Accordingly, Appellant Bahizad received the same erroneous advice as did Appellant Karimian.

Had Appellant Bahizad been independently represented, she would have received independent advice. There has been no waiver from independent counsel. Had she been made aware that Appellant Karimian had available defenses, she would have not pled guilty to a crime that she did not commit. Also,

when it was realized that there was a dispute over the Statement of Facts and the factual support for the Plea, and Appellant Karimian requested the matter to be presented to the judge, Appellant Bahizad was denied independent advice as to what effect that would have upon her.

Since all of these facts support that the Appellants were denied their Sixth Amendment guarantee to effective assistance of counsel, the Fourth Circuit Court of Appeals should have issued a certificate of appealability so that the United States District Judge's decision could be appealed.

Appendix A: Judgment Entered February 25, 2008

FILED: February 25, 2008

UNITED STATES COURT OF APPEALS

No. 07-6936
(1:06-cv-872)
(1:04-cr-00406-CMH)
(1:06-cv-870)

UNITED STATES OF AMERICA, Plaintiff - Appel
DARIA KARIMIAN; BAHIROO BAHIZAD, Defer
Appellants

JUDGMENT

In accordance with the decision of this Court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/Patricia S. Connor, Clerk

Appendix B: Per Curiam Opinion of the Fourth Circuit Court of Appeals

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 07-6936

UNITED STATES OF AMERICA,

Plaintiff - Appellee, versus

DARIA KARIMIAN; BAHIROO BAHIZAD,

Defendants - Appellants.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:04-cr-00406-CMH)

Submitted: January 30, 2008 Decided: February 25, 2008

Before NIEMEYER and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Spencer Dean Ault, LAW OFFICE OF SPENCER AULT, Lovettsville, Virginia, for Appellants. Stephen P. Learned, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM

Daria Karimian and Bahiroo Bahizad seek to appeal the district court's order denying relief on their 28 U.S.C. § 2255 (2000) motions. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A party satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001).

We have independently reviewed the record and conclude that Karimian and Bahizad have not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

Appendix C: Final Order from the United States District Court for the Eastern District of Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DARIA KARIMIAN, Petitioner, V. UNITED STATES OF AMERICA, Respondent.	Civil Action No. 1:06cv870 Criminal No. 1:04cr406
BAHIROO BAHIZAD, V. UNITED STATES OF AMERICA, Respondent.	Civil Action No. 1:06cv872 Criminal No. 1:04cr406

ORDER

This matter comes before the Court on an evidentiary hearing on the petitioners, Daria Karimian and Bahiroo Bahizad motions .to vacate pursuant to 28

U.S.C. 2255 and set aside convictions. After hearing evidence and argument of counsel, and for the reasons stated from the bench, it is hereby

ORDERED that the petitioners' motions are DENIED.

UNITED STATES DISTRICT JUDGE

/s/ Claude M. Hilton
Alexandria, Virginia June 5, 2007

Appendix D: Transcript of United States District Judge Verbal Ruling

THE COURT: All right, I understand. We can keep arguing here. This case comes down, as most cases do, to a credibility of witnesses. We have two people here who stood before me and after being sworn gave testimony in response to my questions concerning the pleas, and now have filed a motion to set these pleas aside and have come in and under oath testified again. Now, interestingly, I have never had a 2255 motion before where the petitioner has actually in the context of the motion, or the evidence for the motion admitted the underlying case. That's what has happened here. Both of these defendants have gotten on the stand and either by direct or cross-examination admitted again today that they are guilty of the offense which they pled guilty to.

Ms. Bahizad got on the stand and said, yes, I used my relative's name and I used her Social Security and I gave it to the rental agent and I didn't tell him otherwise. Well, I intended to pay him, I didn't intend to do him out of any money, but I still committed the

fraud on him. She admitted it here, admitted the plea that she entered.

The same is true of Mr. Karimian. He on the stand either in direct or cross-examination admitted that some $145,000 was diverted that should have been reported in the bankruptcy estate, was never reported. And that is facts sufficient to support the guilt of the underlying charge. They did it by their own testimony. But they also at the time of the plea, both of these petitioners got on the stand and said they understood what facts the Government must prove beyond a reasonable doubt, that they agreed that the Government could prove those facts, and that they could do it, that they did so knowingly, willfully and intentionally.

There was a statement of facts I asked both of them about. And at the time of the plea, both of them said they had reviewed the statement of facts, they had reviewed it with their attorneys, that they did not disagree with any detail in the statement of facts, and

that what the statement of facts said happened was exactly what happened. Now, in this proceeding they come in and say, oh, didn't understand. I didn't do it willfully, I didn't understand willfully. Or intentionally, I didn't understand those things. Yet Mr. Zwerling anqMr. Leibig have gotten on the stand and testified that they went over the statement of facts and, particularly in Mr. Karimian's case, discussed it in great detail. And the exhibits here confirm that they discussed it in great detail as to the questions of intent and so forth. There is no dispute about that.

And the lawyers confirmed the testimony that was given by these two petitioners at the time they entered the plea.

Now, these petitioners either didn't tell me the truth the first time they came before me under oath or they are not telling the truth the second time they come before me under oath trying to set aside their convictions. And I don't think it's hard for any trier of

fact to determine which time they were telling the truth.

Their lawyers negotiated a reasonably good agreement for them at the time of the plea and they wanted to go forward with it. They came in and told me exactly what happened.

Later on they found out that somebody forgot to sign a plea agreement, a statement of facts. And they say, oh, ah-hah, maybe we can make something of this. That statement has a true ring to it, doesn't it?

Besides, it doesn't matter whether the statement of facts is signed or not. I take numerous pleas without a signed statement of facts, and have over the years. These people acknowledge the facts, acknowledged they were true. Now they want to come and say, oh, no, I didn't understand, I was confused about intent, I was confused about intentional.

Well, I find that what's happened is these folks got a good plea deal and decided they had some reason that they wanted a better one, and saw an opportunity to

get it because somebody simply failed to sign a statement of facts, and now try to raise that issue and try to tell another story at this point in time. And I find it is not credible.

And these motions to set aside the sentences imposed in these cases will be denied.

MR. AULT: Please note my objection, Your Honor.

THE COURT: All right. Thank you. And you get all these exhibit books back and out of the way.

Appendix E: 28 USC 2255 Motion of Daria Karimian

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	)	
vs.	)	Criminal No. 04-CR-406
DARIA KARIMIAN,	)	
Defendant.	)	

MOTION TO VACATE OR SET ASIDE BY A PERSON IN FEDERAL CUSTODY

COMES NOW your Defendant, Daria Karimian, by counsel, and moves to vacate or set aside the conviction entered by this court in this matter pursuant to 28 U.S.C. §2255, and as grounds for this Motion states as follows:

1. This honorable court previously entered a judgment of conviction in this matter.

2. That judgment was entered on July 20,2005. A copy of the Judgment is attached hereto as "Exhibit A" and incorporated herein by reference.

3. Your Defendant was committed to the custody of the Bureau of Prisons for a term of five (5) months, followed by a supervised release term of three (3) years.

4. The conviction was for an alleged violation of18 USC §152(7) and 2, Transferring and Concealing Property with Intent to Defeat the Provisions of Title 11.

5. Your Defendant had entered a plea of guilty.

6. The hearing was before a judge, without a trial before a jury.

7. Your defendant did not testify.

8. Your defendant did not appeal from the judgment.

9. There was no result from an appellate court since your Defendant did not appeal the conviction.

10. No other petitions, applications or motions with respect to this judgment have been filed in any federal court.

11. Since there have been no other petitions, applications or motions, there have been no grounds previously raised

12. This conviction was entered unlawfully because:

a. The conviction was obtained by a plea of guilty which was unlawfully induced or not made voluntarily due to the following facts:

i. Your Defendant had been misinformed by his previous criminal defense attorney, John Zwerling, that his mere signature on bankruptcy schedules was sufficient to support the alleged crime because the schedules contained erroneous or incomplete information. Zwerling indicated that it did not matter that Karimian relied upon advice of his bankruptcy counsel who had him sign the schedules before they

were completed, and had never shown him the completed schedules. Your defendant was informed that it did not matter that he was unfamiliar with bankruptcy laws, and the mere fact that he continued paying creditors although he had filed bankruptcy was a criminal offense although he bad made the payments innocently, and with no intent to deceive anyone.

ii. A proposed Statement of Facts was offered to your Defendant in consideration of a plea. This was only being considered because the defense counsel had informed him that his mere signature without knowledge and intent was sufficient to have him found guilty.

iii. Your Defendant made changes to correct the proposed Statement of Facts including deleting the allegation that the acts were done "knowingly and intentionally.' A copy of the "draft" Statement of Facts is attached hereto as "Exhibit B" and incorporated

herein by reference. The draft includes hand-written changes which include both your Defendant's and his former counsel's handwriting. The original reflects the defendant's handwriting in black ink and the defense counsel's in red.

iv. When your defendant deleted references to him having committed any acts with "'knowledge" or "intentionally," your defendant's counsel advised him that those words did not have ordinary everyday meanings, but meant legal knowledge. The defense counsel's handwriting reflects that he inserted the term "legally" before the term "knowledge" and struck the term "intentionally" from the document.

v. Not entirely satisfied with the explanation by Zwerling of "knowledge and intent", your Defendant inquired of another attorney who disagreed with this interpretation as evidenced by the Affidavit by Phillip Walsh, a copy of which is attached here to as Exhibit C

and incorporated herein by reference. Your defendant spoke further with Zwerling after his discussion with Mr. Walsh. Mr. Zwerling asked if Mr. Walsh was a criminal defense attorney. After your defendant indicated that Walsh was a civil attorney, Zwerling indicated that is why Walsh did not know the criminal defense definition of those terms.

vi. It was represented to your Defendant by his counsel that the changes would be made to the Statement of Facts.

Your Defendant never met with the prosecutor to review the Statement of Facts.

vii. Your Defendant never met with the prosecutor to review the Statement of Facts.

viii. On February 22, 2005, your Defendant appeared for the entry of his Plea. He was requested to sign the Plea Agreement in the court's cafeteria minute before the entry of the plea while the prosecutor was nearby.

Although the Statement of Facts had not been presented to your Defendant for signature, it was your defendant's understanding that the Statement of Facts had been changed. Due to the shortage of time, upon signing the Plea Agreement, your Defendant and his previous counsel hurried to the courtroom. The Statement of Facts that had been filed with this honorable court, a copy of which is attached hereto as "Exhibit D" and incorporated herein by reference, in support of his Plea reveals that your Defendant did not sign the Statement of Facts.

ix. During the hearing for the en1ry of the Plea, when your defendants had been asked by this Court &'00 either of yon disagree in any particular with this Statement of Facts?" The prosecutor informed the court that Defendant Bahiroo Bahizad's had been changed just that morning. It was your Defendant Karimian's understanding that this honorable court

was reviewing his earlier revised Statement of Facts. A copy of the February 22,2005 transcript is attached hereto as "Exhibit E" and incorporated herein by reference.

x. When the Pre Sentence Investigation Report was provided and reviewed by your Defendant, your Defendant again voiced his objection to the words "knowledge" and "intentionally" being used, as reflected in an Email from your Defendant to his counsel dated June 26, 2005, attached hereto as "Exhibit F" and incorporated herein by reference.

xi. Your defendant subsequently requested a copy from his counsel of a letter reflecting his understanding at the time of the Plea that the prosecutor agreed that there was no intent to commit fraud Counsel did not provide the requested letter.

xii. Before your Defendant reported for his incarceration, pressures were being placed upon him

by the government to sign his Statement of Facts as evidenced by the faxed letter from Louis Paulson, Esq. dated September 21, 2005, attached hereto as "Exhibit 0" and incorporated herein by reference.

xiii. Your defendant informed his former counsel that he would not sign the Statement of Facts until the reported 'verbal' agreements with Learned (the Assistant U.S. Attorney who prosecuted the case) were incorporated into a final version of the Statement of Facts. Defense counsel refused to provide the corrected Statement of Facts.

xiv. Additionally, before entering the plea of guilty, your Defendant's previous counsel had informed your Defendant that he understood that the financial figures were inaccurate upon which the offense level was to be calculated and that it would be rectified before Sentencing. As sentencing approached, your Defendant became aware that the financial figures

had not been corrected, and that the consequence would create a higher offense level than was understood to be appropriate. In response, prior defense counsel attempted to have your Defendant sign a rejection of advice document if he pursued the prior issue of the incorrect financial figures. Your Defendant was informed by his prior defense counsel that the court would be informed of the correct figures and his accepting the incorrect figures would show his extraordinary acceptance of responsibility.

xv. As further inducement for your Defendant to plead guilty on February 22, 2005, prior defense counsel had informed your Defendant that the prosecutor would return all of the defendant's personal items that had been seized by the Alexandria Fire Marshall in April 2002, which items included valuable airline vouchers. The items were not returned as represented, but the threat of them not being returned was used when your defendant became aware that his Statement of Facts

had not been revised and pressure was being placed upon your Defendant to sign the unacceptable Statement of Facts.

b. Denial of effective assistance of counsel

i. Your Defendant had been misinformed by his previous counsel that his mere signature on bankruptcy schedules that your Defendant's bankruptcy counsel had had him sign before they had been completed was sufficient to support the alleged crime.

ii. Previous defense counsel informed him that it did not matter in his case that he had no knowledge or intent to commit a crime - that it was sufficient to have what counsel referred to as legal knowledge which had a meaning different than the ordinary dictionary definition.

iii. A proposed Statement of Facts was offered to your Defendant in consideration of a plea.

iv. Your Defendant made changes to correct the proposed Statement of Facts including deleting the allegation that the acts were done "knowingly and intentionally." A copy of the "draft" Statement of Facts is attached hereto as "Exhibit B" and incorporated herein by reference. The draft includes hand-written changes which include both your Defendant's and his former counsel's handwriting.

v. Upon deleting the words "knowingly and intentionally", your defendant's counsel advised him that those words did not have ordinary everyday meanings, but meant legal knowledge. The change on the attached Exhibit B reflects his attorney's handwriting emphasizing this meaning of "legally knowledge".

vi. Not entirely satisfied with the explanation by Zwerling of "knowledge and intent", your Defendant inquired of another attorney who disagreed with this interpretation as evidenced by

the Affidavit by Phillip Walsh, a copy of which is attached hereto as Exhibit C and incorporated herein by reference. Your defendant spoke further with Zwerling after his discussion with Mr. Walsh. Mr. Zwerling asked if Mr. Walsh was a criminal defense attorney. After your defendant indicated that Walsh was a civil attorney, Zwerling indicated that is why Walsh did not know the criminal defense definition of those terms.

vii. It was your Defendant's understanding that the changes were to be made to the Statement of Facts.

viii. Your Defendant never met with the prosecutor to review the Statement of Facts.

ix. On February 22, 2005, your Defendant appeared for the entry of his Plea. He was requested to sign the Plea Agreement mere minutes before the entry of the plea. The Statement of Facts that had been filed with this honorable court, a copy of which is attached hereto as "Exhibit D" and incorporated herein by reference, in

support of his Plea reveals that your Defendant did not sign the Statement of Facts.

x. Your Defendant had been informed by his defense counsel that the changes would be made.

xi. Your defendant was directed by his attorney to simply answer 'yes" or "no" to questions that the court asked-that If he said anything else that he would mess things up. During the hearing for the entry of the Plea, when your defendants had been asked by this Court "Do either of you disagree in any particular with this Statement of Facts?" The prosecutor interrupted which focused the discussion on Defendant Bahizad's Statement of Facts. It was also your Defendant Karimian's understanding that this honorable court was reviewing his revised Statement of Facts. A copy of the February 22, 2005 transcript is attached hereto as "Exhibit E" and incorporated herein by reference.

xii. When the Pre Sentence Investigation Report was provided and reviewed by your Defendant, your Defendant again voiced his objection to the words "knowledge" and 'intentionally" being used, as reflected in an Email from your Defendant to his counsel dated June 26, 2005, attached hereto as "Exhibit P' and incorporated herein by reference.

xiii. Your defendant requested a copy of a letter reflecting his understanding at the time of the Plea that the prosecutor agreed that there was no intent to commit fraud. Counsel did not provide the requested letter.

xiv. Before your Defendant reported for his incarceration, pressures were being placed upon him by the government to sign his Statement of Facts as evidenced by the faxed letter from Louis Paulson, Esq. dated September 21, 2005,- attached hereto as "Exhibit G" and incorporated herein by reference.

xv. Your defendant wrote to his former counsel informing him that he would not sign the Statement of Facts until reported 'verbal' agreements with Learned (the Assistant U.S. Attorney who prosecuted the case) were incorporated into the final version. Defense counsel refused to provide the corrected Statement of Facts.

xvi. Based upon the misrepresentations and obfuscations by defense counsel, and the improper understanding that had been conveyed by defense counsel of the element of intent, your defendant did not receive effective assistance of counsel. Defenses were not properly communicated to permit your defendant to make an informed decision whether to plead guilty or not guilty.

xvii. While having a Pre sentence Investigation Report prepared, your defendant was directed by his counsel not to say anything about the Plea or the

underlying facts. When a meeting occurred with the pre-sentencing probation officer, Chris Leibig appeared to represent both defendants and to inform that a written report would be submitted. Your Defendant believes that this was an attempt to hide the deception. No written report was submitted to the officer.

Counsel was therefore at odds with your Defendant and not

representing your Defendant's interests, but protecting his own.

13. These grounds had not been presented previously because your Defendant was unaware of the subterfuge to coerce him into a guilty plea until after his sentencing hearing. Once he became aware, he requested his attorney to bring the matters to the court's attention, but the counsel who deceived your

defendant and this court refused to bring the matter to the court's attention.

14. There are no other petitions or appeals now pending in any court as to this judgment.

15. The name and address of the attorney who represented me in all prior stages of this matter, including preliminary hearing, arraignment, plea and sentencing was:

John K. Zwerling, Esq. Zwerling, Leibig & Moseley, P.C. 108 North Alfred Street Alexandria, Virginia 22314.

As a result of the plea, there had been no trial or appeal, and there have been no other post-conviction proceedings.

16. I was only sentenced on the one count of this one indictment.

17. I have no other sentences to serve other than on this judgment. Wherefore, Movant prays that the

Court grant him all relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 19, 2006.

Daria Karimian

State of Virginia

County/City of Fairfax, to wit:

Sworn to, subscribed and acknowledged before me by Daria Karimian on this 19th day of July, 2006.

My Commission Expires: 12/31/09

Notary Public: Laura Crosbey Moba

Spencer D. Ault, Esq. 13193 Mountain Road

Lovettsville, VA 20180

703-777-7800 Fax: 540-822-3880

Counsel for Defendant

Appendix F: Draft Red-lined Statement of Facts

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,	)	
vs.	)	Criminal No. 04-CR-406
DARIA KARIMIAN and BAHIROO BAHIZAD	)	
Defendants	)	

STATEMENT OF FACTS

If this matter were to proceed to trial, the United States would prove the following beyond a reasonable~ doubt.

I. INTRODUCTION

1. In 1999, the defendant, DARIA KARIMIAN, managed the operations of Crystal Car Care, an auto body and mechanical repair facility, located at 3700 Jefferson Davis Highway.

2. Crystal Car Care was owned by defendant KARIMIAN'S wife, defendant BAHIROO BAHIZAD.

3. On November 18, 1999, acting on behalf of Crystal Car, defendant KARIMIAN filed a voluntary petition under Chapter Seven of the United States Bankruptcy Code. On *[attorney non-compliance]*[1] procedural grounds, that case was dismissed on December 23, 1999, but was re-filed and reinstated, on January 10, 2000, as a petition pursuant to Chapter 11 of the United States Bankruptcy Code. The Chapter 11 proceeding was eventually changed to a Chapter 7 proceeding.

4. In petitions filed both on the November 18, 1999, and January 10, 2000, defendant KARIMIAN caused Crystal Car Care to file with the bankruptcy court (i) schedules that listed, among other things, the company's property, debts, and creditors and

(ii) a Statement of Financial Affairs which elicited from the debtor additional information material to both a Chapter 7 and Chapter 11 resolution. On Schedule F defendant KARIMIAN caused Crystal Car Care to identify a tot9.1.of $68,000 of debt, later amended to $86,000 (due to a [attorney's][2] error). [Schedule I estimates that it would operate at a loss in the foreseeable future][3]

5. On July 18, 2000, the Trustee' effectively terminated the proceeding by entering an order which stated (i) that he [the trustee] had made diligent inquiry into the financial affairs of the debtor [Crystal Car Care] and the location of any property belonging to the estate and (ii) that there was no property available from the estate for distribution to the

---

[1] Handwritten textual insert. Black ink insert by defendant. Red ink cross-out by prior attorney.

[2] Handwritten textual insert. Black ink insert by defendant. Red ink cross-out by prior attorney.

[3] Handwritten textual insert. Black ink insert by defendant. Red ink cross-out by prior attorney.

creditors, thereby leading creditors to conclude that it would be fruitless to seek further action to collect on Crystal Car Care debts.

II. THE TRANSFER OF CRYSTAL CAR CARE FUNDS AND THE PURCHASE OF PROPERTY IN THE NAME OF AMERINVEST

6. Prior to the aforementioned bankruptcy proceeding, from [March 1999][4] to November 1999, defendant KARIMIAN caused the transfer of Crystal Car Care funds in the amount of approximately $145,000 to a First Union Bank Account in the name of Donna M" defendant KARIMIAN's sister-in-law.

On November 12, 1999, [with gift that included funds][5] from the Donna M. account, defendant KARIMIAN caused the purchase of commercial property in

---

[4] Handwritten textual insert. Black ink insert by defendant. Red ink cross-out by prior attorney.

[5] Ibid.

Alexandria, under the name Amerinvest, a company newly formed by defendant KARIMIAN.

III. FALSE STATEMENTS DURING THE BANKRUPTCY

8. In both the Chapter 7 and Chapter 11 petitions defendant KARMIAN [signed the last page of the petition, but mentioned the mistakes to the Bankruptcy Judge and the Trustees.] was responsible for fact that Crystal Car Care filed false][6] and misleading schedules as to material matters, namely:

a) On Schedule A, the defendant KARIMIAN failed to disclose: Crystal Car Care's potential interest in the Alexandria property held in the name of Amerinvest;

b) On Schedule B, the defendant KARIMIAN failed to disclose: Crystal Car Care's potential interest *in* the First Union Bank Account in the name of Donna M.; and

c) On the Statement of Financial Affairs, Item 20 (which requires the debtor to list all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred within one year immediately preceding the commencement of this bankruptcy case), the defendant KARIMIAN [DID NOT][7] disclose the transfer of Crystal Car Care funds in the amount of at least $145,000 to the First Union Bank Account of Donna M.

9. The defendant Karimian [should have had [legally] knowledge][8] that the bankruptcy trustee should have known about these aforementioned matters but

---

[6] Handwritten textual insert. Black ink insert by defendant. Red ink cross-out by prior attorney.

[7] Handwritten textual insert. Black ink insert by defendant. Red ink cross-out by prior attorney.

[8] Handwritten textual insert. Black ink insert by defendant. Red ink insert by prior attorney..

[intentionally][9] omitted disclosing them on the schedules and in subsequent section 341 hearings, thereby preventing the trustee from knowing all relevant information regarding Crystal Car Care.

Respectfully submitted,

Paul J. McNulty united States Attorney

By:

Stephen P. Learned Assistant United States

Jack Hanly Assistant United States Attorney

Seen and Agreed:

_____

Daria Karimian

_____

John K. Zwerling, Esq. Counsel for Daria Karimian

[9] Handwritten textual insert. Black Ink shows defendant crossed out the word intentionally. Red Ink shows prior counsel crossed out the change.

Appendix G: Affidavit of Philip Walsh, Esq.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	)	
vs.	)	Criminal No. 04-CR-406
DARIA KARIMIAN,	)	
Defendant.	)	

AFFIDAVIT OF PHILIP J. WALSH

I, Philip J. Walsh, Esq. do solemnly swear and affirm under oath the following:

1. I am an attorney authorized to practice law in the Commonwealth of Virginia and in this Court. My Virginia Bar number is 13122.

2. During 2005, I was representing Daria Karimian in a civil matter.

3. Mr. Karimian has authorized me to make the disclosure of the facts contained herein.

4. In January, 2005, Mr. Karimian contacted me and expressed his concerns about the terms of a proposed

plea agreement and plea to certain criminal charges against himself and his wife that were then pending in this Court. He informed that his criminal defense counsel had informed him that the terms "knowingly and intentionally" in the plea agreement did not have ordinary, everyday meanings. He expressed his concerns to me regarding his counsel's insistence that the terms meant "legal knowledge" which has a different meaning than a dictionary or plain meaning of the terms "knowingly" or "intentionally". We had several discussions about this issue during the period January 15 through May 6, 2005. I gratuitously did some legal research on the question for him and I informed him that I did not agree with what his criminal defense attorney was advising him.

5. I declare under penalty of perjury that the foregoing is true and correct.

_____

Philip J. Walsh

STATE OF VIRGINIA: **COUNTY OF FAIRFAX,** to wit: Sworn to, subscribed and acknowledged before me by Philip J. Walsh on this the 19th day of July, 2006.

/s/ Philip J. Walsh

My Commission Expires: 12/31/09

Laura Cosbey Moba

/s/ Laura Cosbey Moba

Appendix H: Submitted Statement of Facts

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,	)	Criminal No. 04-CR-406
vs.	)	
DARIA KARIMIAN and BAHIROO BAHIZAD	)	
Defendants	)	

STATEMENT OF FACTS

I. INTRODUCTION

1. In 1999, the defendant, DARIA KARIMIAN, managed the operations of Crystal Car Care~ an auto body and mechanical repair facility, located at 3700 Jefferson Davis Highway.

2. Crystal Car Care was owned by defendant KARIMIAN'S wife, defendant BAHIROO BAHIZAD.

3. On November 18, 1999, acting on behalf of Crystal Car Care, defendant KARIMIAN filed a voluntary

petition under Chapter Seven of the United States Bankruptcy Code. On procedural grounds, that case was dismissed on December 23, 1999, but was re-filed and reinstated, on January 10, 2000, as a petition pursuant to Chapter 11 of the United States Bankruptcy Code. The Chapter 11 proceeding was eventually changed to a Chapter 7 proceeding.

4. In petitions filed both on the November 18, 1999, and January 10~ 2000, defendant KARIMIAN caused Crystal Car Care to file with the bankruptcy court (i) schedules that listed, among other things, the company's property, debts; and creditors and (ii) a statement of Financial Affairs which elicited from the debtor additional information material to both a Chapter 7 and Chapter 11 resolution. On Schedule F defendant KARIMIAN caused Crystal Car Care to identify a total of $68,000 of debt, late~ amended to $86,000 (due to a clerical error). Schedule I stated that

crystal Car Care would operate at a loss in the foreseeable future.

5. On July 18, 2000, the Trustee effectively terminated the proceeding by entering an order which stated *(i)* that he [the trustee] had made diligent inquiry into the financial affairs of the debtor [Crystal Car Care] and the location of any property belonging to the estate and (ii) that there was no property available from the estate for distribution to the creditors, thereby leading creditors to conclude that it would be fruitless to seek further action to collect on Crystal Car Care debts.

II. THE TRANSFER or CRYSTAL CAR CARE FUNDS AND THE PURCHASE OF PROPERTY IN THE NAME OF AMERINVESX

6. Prior to the aforementioned bankruptcy proceeding, from July to November 1999, defendant KARIMIAN caused the transfer of Crystal Car Care funds in the

amount of approx1mately $145,000 to a First Union Bank Account in the name of Donna M.• defendant KARIMIAN's sister-in-law.

7. On November 12, 1999, with money that included funds from the Donna M. account, defendant KARIMI~~ caused the purchase of commercial property in Alexandria, under the name of Amerinvest, a company newly formed by defendant KARIMIAN.

FALSE STATEMENTS DORING THE BANKRUPTCY

In both the Chapter 7 and Chapter 11 petitions, defendant KARIMIAN was responsible for the fact that Crystal Car filed false and misleading schedules as to material matters, namely:

a) On Schedule A, the defendant KARIMIAN failed to disclose: Crystal Car Care's potential inteL8st in the Alexandria property held in the name of Amerinvest;

b) On Schedule B, the defendant KARIMIAN failed to disclose: Crystal Car Care's potential interest in the First Union Bank Account in the name of Donna M.; and

c) On the Statement of Financial Affairs, Item 10 (which requires the debtor to list all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred within one year immediately preceding the commencement of this bankruptcy casa), the defendant KARIM!AN did not disclose. the transfer of Crystal *Car* Care funds in the amount of at least $145,000 to the First Onion Bank Account of Donna M.

9. The defendant KARIMIAN had knowledge that the bankruptcy trustee should have known about these aforementioned matters but intentionally omitted disclosing them on the schedules and in subsequent section 341 hearings, thereby preventing the trustee

from knowing all relevant information regarding

Crystal Car Care,
Respectfully submitted,

Paul J. McNulty

United States Attorney

By: Stephen P. Learned

/s/ Stephen Learned Attorney

Assistant United States Attorney

Jack Hanly

Assistant United States Attorney

Seen and Agreed:

Daria Karimian

John K. Zwerling, Esq.,

/s/ John Zwerling

Counsel for Daria Karimian

Appendix I: 28 USC 2255 Motion of Bahiroo Bahizad

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,	)	Criminal No. 04-CR-406
vs.	)	
	)	
BAHIROO BAHIZAD	)	
Defendants	)	

MOTION TO VACATE OR SET ASIDE A JUDGMENT OF CONVICTION

COMES NOW your Defendant, Bahiroo Bahizad, by counsel, and moves to vacate or set aside the conviction entered by this court in this matter pursuant to 28 U.S.C. §2255, and as grounds for this Motion states as follows:

1. This honorable court previously entered a judgment of conviction in this matter.

2. That judgment was entered on July 20, 2005.

3. Your Defendant was sentenced to probation through the probation office of this court.

4. The conviction was for an alleged violation of 18 USC §371, Conspiracy to falsely represent social security numbers.

5. Your Defendant had entered a plea of guilty.

6. The hearing was before a judge, without a trial before a jury.

7. Your defendant did not testify.

8. Your defendant did not appeal from the judgment.

9. There was no result from an appellate court since your Defendant did not appeal the conviction.

10. No other petitions, applications or motions with respect to this judgment have been filed in any federal court.

11. Since there have been no other petitions, applications or motions, there have been no grounds previously raised

12. This conviction was entered unlawfully because:

a. The conviction was obtained by a plea of guilty which was unlawfully induced or not made voluntarily due to the following facts:

i. Your Defendant had been misinformed by her previous counsel that her husband would be found guilty, despite his lack of knowledge and intent, of concealing assets in a bankruptcy case because his signature appeared on bankruptcy schedules prepared by a bankruptcy counsel who had had him sign them before they had been completed.

ii. Her husband had been deceived by his previous defense counsel as evidenced by his Motion filed simultaneously herein, and

incorporated herein by reference. Upon belief, your Defendant's counsel was a participant in that deception because he was in the same office as her husband's counsel and is his partner. The facts stated in Daria Karimian's Motion to Set Aside or Vacate his judgment of conviction are incorporated herein as if fully set forth herein.

iii. The court was not informed that your Defendant was required to plead guilty, and that her husband's plea agreement was contingent upon her pleading guilty. This requirement is evidenced in an Email from her prior defense counsel, Chris Leibig, dated September 19, 2005, attached hereto as "Exhibit A' and incorporated herein by reference.

b. Denial of effective assistance of counsel

i. Your defendant had been misinformed by her previous counsel her husband's lack of actual knowledge and intent had no bearing on his charge and that "knowledge and

intent" under the Indictment and the Statement of Facts in his case meant legal knowledge and not ordinary definitions of those terms, and accordingly that her Husband would be sentenced for a significant period of time.

i. Your defendant had been misinformed by her previous counsel that his mere signature on bankruptcy schedules that your Defendant's bankruptcy counsel had had him sign before they had been completed was sufficient to support the alleged crime.

ii. Your defendant was required to plead guilty to prevent her husband from receiving a significantly higher sentence. As indicated in that Email, "Mr. Karimian's plea, which guaranteed him a significantly lower sentence than he may have received if he'd gone to trial, was made contingent upon Ms. Bahizad pleading guilty...."

iii. Since your defendant was represented by the partner of her husband's counsel, she was denied independent legal counsel who could properly advise her.

13. These grounds had not been presented previously because your Defendant was unaware of the subterfuge to coerce her husband into a guilty plea until after his sentencing hearing. Once her husband became aware, he requested his attorney to bring the matters to the court's attention, but the counsel who deceived her husband and this court refused to bring the matter to the court's attention.

14. There are no other petitions or appeals now pending in any court as to this judgment.

15. The name and address of the attorney who represented me in all prior stages of this matter, including preliminary hearing, arraignment, plea and sentencing was:

John K. Zwerling, Esq. Zwerling, Leibig & Moseley, P.C. 108 North Alfred Street Alexandria, Virginia 22314.

As a result of the plea, there had been no trial or appeal, and there have been no other post-conviction proceedings.

16. I was only sentenced on the one count of this one indictment.

17. I have no other sentences to serve other than on this judgment. Wherefore, Movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Spencer D. Ault, Esq.

/s/ Spencer D. Ault

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 19, 2006.

Bahiroo Bahizad

/s/Bahiroo Bahizad

State of Virginia

County/City of Fairfax, to wit:

Sworn to, subscribed and acknowledged before me by

Bahiroo Bahizad on this 19th day of July, 2006.

My Commission Expires: 12/31/09

Notary Public: Laura Crosbey Moba

/s/ Laura Crosbey Moba

Spencer D. Ault, Esq. 13193 Mountain Road

Lovettsville, VA 20180

703-777-7800 Fax: 540-822-3880

Counsel for Defendant

Appendix J: Statement of Facts With Original Cross-outs

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 04-Cr-406
	)	
v.	)	
	)	
DARIA KARIMIAN and BAHIROO BAHIZAD	)	
Defendants	)	

STATEMENT OF FACTS

If this matter were to proceed to trial, the United States would prove the following beyond a reasonable doubt.

I. INTRODUCTION

1. In 1999, the defendant, DARIA KARIMIAN, managed the operations of Crystal Car Care, an auto body and mechanical repair facility, located at 3700 Jefferson Davis Highway.

2. Crystal Car Care was owned by defendant KARIMIAN'S wife, defendant BAHIROO BAHIZAD.

3. On November 18, 1999, acting on behalf of Crystal Car Care, defendant KARIMIAN filed a voluntary petition under Chapter Seven of the United States Bankruptcy Code. On procedural grounds, that case was dismissed on December 23, 1999, but was re-filed and reinstated, on January 10, 2000, as a petition pursuant to Chapter 11 of the United States Bankruptcy Code. The Chapter 11 proceeding was eventually changed to a Chapter 7 proceeding.

4. In petitions filed both on the November 18, 1999, and January 10, 2000, defendant KARIMIAN caused Crystal Car Care to

file with the bankruptcy court (i) schedules that listed, among other things, the company's property, debts, and creditors and (ii) a Statement of Financial Affairs which elicited from the debtor additional information material to both a Chapter 7 and Chapter 11 resolution. On Schedule F defendant KARIMIAN caused Crystal Car Care to identify a total of $68,000 of debt, later amended to $86,000 (due to a clerical error). On Schedule I defendant KARIMIAN caused Crystal Car Care to estimate that it would operate at a loss in the foreseeable future.

5. On July 18, 2000, the Trustee effectively terminated the proceeding by entering an order which stated (i) that he [the trustee] had made diligent inquiry into the financial affairs of the debtor [Crystal Car Care] and the location of any property belonging to the estate and (ii) that there was no property available from the estate for distribution to the creditors, thereby leading creditors to conclude that it would be fruitless to seek further action to collect on Crystal Car Care debts.

II. THE TRANSFER OF CRYSTAL CAR CARE FUNDS AND THE PURCHASE OF PROPERTY IN THE NAME OF AMERINVEST

6. Prior to the aforementioned bankruptcy proceeding, from July to November 1999, defendant KARIMIAN caused the transfer of Crystal Car Care funds in the amount of approximately $145,000 to a First Union Bank Account in the name of Donna M., defendant KARIMIAN's sister-in-law.

7. On November 12, 1999, using funds from the Donna M. account, defendant KARIMIAN caused the purchase of commercial property in Alexandria, under the name of Amerinvest, a company newly formed by defendant KARIMIAN.

III. FALSE STATEMENTS DURING THE BANKRUPTCY

8. In both the Chapter 7 and Chapter 11 petitions, defendant KARIMIAN caused Crystal Car Care to file false and misleading schedules as to material matters, namely:

a) On Schedule A, the defendant KARIMIAN failed to disclose: Crystal Car Care's potential interest in the Alexandria property held in the name of Amerinvest;

b) On Schedule B, the defendant KARIMIAN failed to disclose: Crystal Car Care's potential interest in the First Union Bank Account in the name of Donna M.; and

c) On the Statement of Financial Affairs, Item 10 (which requires the debtor to list all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred within one year immediately preceding the commencement of this bankruptcy case), the defendant KARIMIAN did not disclose the transfer of Crystal Car Care funds in the amount of at least $145,000 to the First Union Bank Account of Donna M.

9. The defendant KARIMIAN had knowledge that the bankruptcy trustee should have known about these aforementioned matters but

~~intentionally~~ omitted disclosing them on the schedules and in subsequent section 341 hearings, thereby preventing the trustee from knowing all relevant information regarding Crystal Car Care.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Stephen P. Learned
Assistant United States Attorney

_____
Jack Hanly
Assistant United States Attorney

Seen and Agreed:

_____
Daria Karimian

_____
John K. Zwerling, Esq.
Counsel for Daria Karimian

must mention some important facts about Alan's misbandling
- not having fully explained FACTS by Alan
- Telling the Judge + trustee that signed, but did not see or read the petition

- must not have a lien on the 617K in CITY'S hands
- " write down that the CITY will not get the 840 K
- must write that if the ~~claim~~ CREDITORS has "zero" balance then no more payments
- must allow to argue about the reimbursement to PELTON
- " " not 6K'S CHECK if he agrees that CREDIT did not owe him money
- GREENWOOD TRUST (612K) is unsecured
- CITI FINANCIAL'S 7K must be part of CITIBANK'S 62K

CERTIFICATE OF SERVICE

I certify that on May ____, 2008, I mailed three complete copies of the Petition for Writ of Certiorari to all parties, addressed as shown below.

_____

Spencer D. Ault

Stephen P. Learned, Esq.
U.S. Attorney's Office
2100 Jamison Avenue
Alexandria, VA 22314
Fax: 703-299-3981